IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.1315 of 2005
With
Civil Application No.1870 of 2005

Shri Wasudeo Krishna Karalkar Appellant
Vs.
Shri Digambar Krishna Karalkar & ors. Respondents

Mr.Sandesh Patil with Mr.Vikas Mahanagare for appellant.

Mr.A.S.Khandeparkar i/b. Khandeparkar & Associates for respondents.

CORAM: B.H.MARLAPALLE, J.

April 11, 2007.

P.C.

1. Heard Mr.Sandesh Patil, the learned counsel for the appellant who was original defendant no.1 in Regular Civil Suit No.101 of 1997. The said suit was filed by the plaintiff, present respondent no.1 and defendant nos.1 to 7 are his brothers and defendant no. 8 - Leelabai is his sister. The suit was filed for partition and separate possession of 1/9th share of the plaintiff who claimed that everyone of them was entitled for 1/9th share in the property of their father Krishna Shankar Karalkar. The trial Court vide its judgment and order dated 22/12/2000 has decreed the suit holding that each of the brothers

and sister have 1/9th share in the suit property. The defendant no.1 had challenged the said decree in Regular Civil Appeal No.19 of 2001 and the learned Additional District Judge at Sindhudurg, Oras was pleased to dismiss the same vide his judgment and order dated 29th June 2005. Hence this Second Appeal.

2. Though not the trial Court, the lower Appellate Court in its judgment has reproduced the description of the suit properties and they are as under:

| Sr. No. | Survey No. | Hissa No. | Area Hector Ares |
|---|---|---|---|
| 1. | 101 | 2 | 0-16-7 |
| 2. | 105 | 29 | 0-29- |
| 3. | 160 | 15 | 0-03- |
| 4. | 160 | 22 | 0-05 |
| 5. | 160 | 28 | 0-02-3 |
| 6. | 160 | 31 | 0-00-5 |
| 7. | 160 | 51 | 0-01-5 |

| | | | |
|---|---|---|---|
| 8. | 160 | 53 | 0-09-4 |
| 9. | 160 | 65 | 0-03-3 |
| 10. | 160 | 75 | 0-05-1 |
| 11. | 160 | 77 | 0-07-1 |
| 12. | 161 | 8 | 0-06-1 |
| 13. | 161 | 13 | 0-04-3 |
| 14. | 161 | 14 | 0-04-5 |
| 15. | 161 | 17 | 0-02-3 |
| 16. | 161 | 32 | 0-02-0 |
| 17. | 162 | 16 PO.KH. | 0-03-3 |
| 18. | 163 | 15 | 0-02-1 |
| | | | 0-00-2 |
| 19. | 167 | 9 | 0-02-3 |
| | | | 0-00-2 |
| 20. | 167 | 14 | 0-02-0 |
| 21. | 167 | 36 | 0-00-8 |
| 22. | 167 | 41 | 0-00-5 |
| 23. | 167 | 46 | 0-01-5 |
| 24. | 169 | 4 | 0-02-0 |
| 25. | 170 | 3 | 0-20-0 |
| | | | 0-02-0 |

| | | | |
|---|---|---|---|
| 26. | 170 | 4 | 0-20-0 |
| | | PO.KH. | 0-01-0 |
| 27. | 170 | 7 | 0-14-0 |
| 28. | 170 | 8 | 0-10-0 |
| | | | 0-01-0 |
| 29. | 170 | 9 | 0-15-0 |
| | | | 0-01-0 |
| 30. | 170 | 14 | 0-65-0 |
| | | | 0-02-0 |
| 31. | 170 | 15 | 0-18-0 |
| | | | 0-01-0 |
| 32. | 170 | 17 | 0-07-0 |
| | | | 0-01-0 |

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3. Both the Courts below have uniformly held that the suit properties i.e. 32 of them either belonged to or were in cultivation of late Krishna Karalkar, the father of the plaintiff and the defendants. Krishna died in the year 1962 i.e. after the

tiller's day and he had become statutory owner in respect of the lands which were tenanted lands. However, by the time Section 32M certificates were issued by the Competent Authority under the Bombay Tenancy Act, Krishna was not alive and, therefore, Madhukar - defendant no.3 who was cultivating the land at the village got the 32M certificates in the name of the eldest brother defendant no.1 in respect of at least three suit properties i.e. Sr.No.24 - Survey No.169/4, Sr.No.26 - Survey No.170/4 and Sr. No.27 - Survey No.170/7. Let it be recorded at this stage itself that amongst the eight brothers it was only Digambar - plaintiff, Madhukar - defendant no.3, Janardhan - defendant no.5, Ramesh - defendant no.6 and Suresh - defendant no.7 were actually at the village and cultivating the lands. Defendant no.8 - Leelabai was married and defendant no.1 - Vasudeo was having business after he retired from Mumbai whereas Vishwanath - defendant no.2 was also in service and he retired and came to the village. Similarly Manohar was in service when the suit was filed in the year 1997.

4. Mr.Patil, the learned counsel for the appellant - defendant no.1 has limited his challenge

to the following properties having been treated as ancestral properties viz. Sr.No.24 - Survey No.169/4 admeasuring 4 R., Sr.No.26 - Survey No.170/4 - admeasuring 20 R., Sr. No. 27 - Survey No.170/7 admeasuring 14 R. Thus the appellant's dispute with the decree passed and confirmed by the lower Appellate Court is only in respect of these three properties totally admeasuring 37 R. ( Survey no.170/4 - 20 R. + 1 R. Potkharab). He has relied upon the certified copies of the certificates issued under Section 32M of the Bombay Tenancy Act in favour of Vasudeo - defendant no.1. The lower Appellate Court has referred to these contentions in para 15 of its judgment and the certified copies brought on record along with the list at Exhibit 51. If regards be had to the certificates on record, at the relevant time Vasudeo was residing at Mumbai and his brother Madhukar - defendant no.3 got these lands entered in the name of defendant no.1 - Vasudeo. At the same time it noted that the Mutation extract at Exhibit no.69 dated 21/2/1960 showed that the land Survey No.107 Hissa No.9, Survey No.167 Hissa No.14, Survey No.167 Hissa No.36, Survey No.167 Hissa No.41, Survey No.167 Hissa No.46, Survey No.170 Hissa No.15 and Serial Nos.19 to 23 and 31 were purchased by deceased

Krishna on 21/2/1960 under sale deed and in respect of that as per Mutation extract no.2971, the name of defendant no.1 was shown as the head of the joint family in respect of the suit lands. The lower appellate Court rightly referred to the decision rendered in RTS Appeal No.75 of 1997 and the Additional Collector by his judgment and order in this appeal held that the defendant no.1 was only holding the land as the head of the joint family and the entries of the other heirs as joint sharers were correct. This decision in RTS Appeal No.75 of 1997 has reached its finality and, therefore, it is not open for the defendant no.1 to claim his exclusive right on any of the suit properties including properties at Sr.Nos.24, 26 and 27 as referred to hereinabove. The lower Appellate Court also agreed with the trial Court that all the suit lands were either cultivated by deceased Krishna Shankar, father of all the parties as tenant thereof or he had purchased the lands and this was the position as on the tiller's day. In the case of majority of the tenanted lands the ownership certificate under Section 32M was issued in the name of deceased Krishna Shankar. In respect of the above mentioned three properties such certificate was issued in the

name of the defendant no.1 and the lower Appellate Court has rightly dealt with the same and repelled the contentions of the defendant no.1 that those three properties were self acquired properties of defendant no.1. Defendant no.1 was never cultivating any agricultural land and he was all along at Mumbai.

5. Let us also examine the oral evidence. Defendant no.1 did not step in the witness box but on his behalf his son Nagesh entered the witness box as the power of attorney. He stated in his examination in chief that the properties at Sr.Nos.24, 29 and 32 i.e. Survey No.169/4, Survey No.170/9 and Survey No.170/17 respectively, were the self acquired properties of his father - defendant no.1. However, in his cross-examination he admitted that the order passed in appeal had become final and that Krishna Shankar Karalkar was cultivating the suit lands till 1962 and after his demise lands were entered in the name of the defendant no.1 as the head of the family. He also admitted that after the demise of Krishna in the succession register all the names of his LRs were entered. It is thus clear that the suit properties were the joint family properties originally held and cultivated by the parties' father Krishna and both

the Courts below rightly recorded concurrent findings that the claim of defendant no.1 in respect of the three properties mentioned hereinabove was untenable. The findings recorded by both the Courts below are based on oral and documentary evidence and on an exercise of fact finding. No substantial question of law is involved in this appeal and, therefore, it must fail at the threshold and the same is hereby dismissed.

6. Civil application does not survive and the same stands rejected. Interim order stands vacated.

(B.H.MARL